

STATE OF SOUTH CAROLINA

(Caption of Case)

In Re:

Generic Proceeding to Explore a Formal Request for
Proposal for Utilities that are Considering
Alternatives for Adding Generating Capacity

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2005 - 191 - E

(Please type or print)

Submitted by: Edward M. Woodward, Jr.SC Bar Number: 6226Address: Woodward, Cothran & HerndonTelephone: 803-799-9772Post Office Box 12399Fax: 803-799-3256Columbia, S.C. 29211

Other: _____

Email: emwoodward@wchlawn.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

- ☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously
- ☒ Other: Comments regarding Workshop

INDUSTRY (Check one)**NATURE OF ACTION** (Check all that apply)

- | | | | |
|--|--|--|---|
| <input checked="" type="checkbox"/> Electric | <input type="checkbox"/> Affidavit | <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Electric/Gas | <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certificatio |
| <input type="checkbox"/> Electric/Telecommunications | <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigator |
| <input type="checkbox"/> Electric/Water | <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Electric/Water/Telecom. | <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Electric/Water/Sewer | <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Gas | <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Railroad | <input checked="" type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Sewer | <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Telecommunications | <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Water | <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Water/Sewer | <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Administrative Matter | <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| | <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

WOODWARD, COTHRAN & HERNDON

Attorneys at Law

EDWARD M. WOODWARD, JR.
DARRA W. COTHRAN
WARREN R. HERNDON, JR.

440 KNOX ABBOTT DRIVE, SUITE 200
CAYCE, SOUTH CAROLINA 29033
POST OFFICE BOX 12399
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE (803) 799-9772 FACSIMILE (803) 799-3256

EDWARD M. WOODWARD, SR.
(1921-2000)

March 13, 2008

The Honorable Charles L. A. Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, S.C. 29211

RE: Notice of Workshop – Generic Proceeding To Explore A Formal Request For Proposal
For Utilities That Are Considering Alternatives To Adding Generating Capacity
Docket No. 2005-191-E

Dear Mr. Terreni:

LS Power Associates, L.P. appreciates the opportunity to have participated in the March 13, 2008 workshop, and would like to offer the Commission these post-workshop comments on the presentation by South Carolina Electric & Gas Company, Duke Energy Carolinas, LLC, and Progress Energy Carolinas, Inc. (the "Utilities"). The comments are limited to the exceptions to the use of RFPs proposed by the Utilities, and provisions that could have a negative impact on the perceived fairness of the process.

Exceptions to the Use of RFPs

In their presentation, nine broad cases where exceptions to the RFP process would be acceptable, which seemed to cover one way or another every possible situation. In Order 2007-626, the Commission states "Therefore, in order to test competitive generation procurement opportunities without jeopardizing reliability or cost, RFPs will only be mandatory for new peaking requirements." The commission does not say RFPs will be mandatory with certain exceptions. The commission states that RFPs are mandatory for new peaking requirements.

However, LS Power recognizes several of the scenarios presented by the Utilities, such as short-term purchases, may be valid situations where an RFP may not be practical. The Commission should ensure that an exception is not so broad that it creates a loophole in the intent of the order. Three exceptions proposed by the Utilities appear to lend themselves to the opportunity for abuse. The first is the proposed exception for near-term capacity needs, defined as less than 18 months away. The Commission should ensure that the near-term capacity need is due to a legitimate emergency situation of load growth in excess of the forecast, and not due to

the inaction of the utility in procuring resources. The second exception is repowering of existing facilities. A repowering which consists of retiring an existing unit and constructing a new unit at the site is really two independent decisions – one to retire a unit, and a second to construct a new unit at the site. There is not a valid reason to not test the proposed new unit against alternatives. Otherwise, this provision could lend itself to abuse. Finally, the Utilities propose an exception if 10% or more of the entity's generation capacity is already purchased from others. This objection to RFPs, that an incumbent only has a 90% market share for its supply, was raised at the hearing in this matter, and the Commission considered and rejected it in Order 2007-626. Such an exception has no legitimate basis, and this broad exception could also lend itself to abuse.

Perceived Fairness of the Process

LS Power commends the Utilities for proposing a process which is generally very fair. As discussed at the hearing in this docket, the perceived fairness of the process is critical for attracting a large number of competitive bids, which increases the likelihood of identifying the lowest cost resource for ratepayers. However, two provisions proposed by the Utilities introduce subjectivity to the process and present the opportunity for unfair results. The Utilities propose that changes to the evaluation criteria or analysis methods after bids are received should be permitted, provided the reason for the changes is documented. LS Power cannot imagine a situation where it would be fair to change the rules mid-stream. Even if such justification could be imagined, we submit that the negative impact to the fairness of the process would offset any benefit of changing the evaluation criteria. Second, the Utilities propose to request to allow bidders to refresh/update their bids. Not only is this unfair, but it provides the opportunity for bidders to game the process by submitting a low-ball bid to remain on the shortlist, then increase their price during the refresh process. Allowing a refresh introduces subjectivity into the process which has a negative impact on the process.

Finally, there was a question by the Commission regarding the provision that the utility may revise its capacity needs forecast to reduce, eliminate, or increase the amount of power sought at any point during the RFP process or negotiations. LS Power can confirm that this provision is a standard provision in RFP's throughout the country, and perceives this provision as fair, provided the entity's capacity needs truly change due to exogenous events.

Again, LS Power appreciates the Commission's efforts to further wholesale competition, and looks forward to seeing the resulting savings for South Carolina ratepayers.

THIS DOCUMENT IS AN EXACT DUPLICATE, WITH THE EXCEPTION OF THE FORM OF THE SIGNATURE, OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

Very truly yours,

WOODWARD, COTHRAN & HERNDON

s/Edward M. Woodward, Jr.

Edward M. Woodward, Jr.
emwoodward@wchl原因.com
803-799-9772 (ext. 11)

EMWjr/bjd

cc: Belton T. Zeigler, Esquire (beltonzeigler@hsblawfirm.com)
Bret Perlman, Esquire (by mail)
Catherine E. Heigel, Esquire (ceheigel@duke-energy.com)
Frank R. Ellerbe, III, Esquire (fellerbe@robinsonlaw.com)
Len S. Anthony, Esquire (len.s.anthony@pgnmail.com)
Kendall Bowman, Esquire (kendal.bowman@pgnmail.com)
K. Chad Burgess, Esquire (chad.burgess@scana.com)
Patricia B. Morrison, Esquire (tmorrison@scana.com)
Richard L. Whitt, Esquire (rlwhitt@alrlaw.com)
Scott Elliott, Esquire (selliott@elliottlaw.us)
Shannon Bowyer Hudson, Esquire (shudson@regstaff.sc.gov)